



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

NOV 1 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David Mairo, Esq.
Connell Foley LLP.
Attorney for Respondent
85 Livingston Avenue
Roseland, New Jersey 07068

Re: County of Bergen
Docket No. RCRA-02-2001-7110

Dear Mr. Mairo:

Enclosed is a copy of the Consent Agreement and Final Order ("CA/FO") in the above referenced proceeding signed by the Regional Administrator of the U.S. Environmental Protection Agency.

Please note that payment is due within forty-five (45) days of signature of the Final Order by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given in that Order.

Sincerely yours,

A handwritten signature in black ink, appearing to read "William H. Nurkin" or similar, written over the typed name.

Gary H. Nurkin
Assistant Regional Counsel

Enclosures

cc:, John Barry
NJDEP

bcc: Hanna Maciejko, 2DEPP-RPB
Mary Mears, 2CD-PAT
George Meyer, 2DECA-RCB
Ronald Gherardi, 2FIN
Stephen J. McGuire, ALJ
Edward Guster, 2DECA-RCB
Phil Flax, 2DECA-RCB
Wilkie Sawyer, 2ORC-WTS
Gary Nurkin, 2ORC-WTS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In The Matter of:

COUNTY OF BERGEN

Respondent

Proceeding Under Section 3008
of the Solid Waste Disposal Act,
as amended

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No. RCRA-02-2001-7110

PRELIMINARY STATEMENT

This administrative proceeding was instituted pursuant to Section 3008 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6901 et seq. (hereinafter collectively referred to as "the Act" or "RCRA").

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance ("EPA"), issued a Complaint, Compliance Order and Notice of Opportunity for Hearing to COUNTY OF BERGEN (hereinafter referred to as "Respondent") on September 23, 2001. The Complaint charged Respondent with violating four requirements relating to the generation, management and transportation off-site of hazardous waste pursuant to 40 C.F.R. Part 262 (1993) (N.J.A.C. 7:26G-6.1(a)), 40 C.F.R. Part 265 (1993) (N.J.A.C. 7:26G-9.1(a)) and 40 C.F.R. Part 268

(1993) (N.J.A.C. 7:26G-11.1(a)). EPA and Respondent have subsequently engaged in settlement discussions, and each has decided that settlement of this matter on the terms set forth in this Consent Agreement and Final Order is appropriate.

FINDINGS OF FACT

1. Respondent owns and operates the Bergen County Police, Fire, and Emergency Medical Services Academy and the associated firing range located at 281 Campgaw Road, Mahwah, New Jersey 07430 (the "facility").

2. On or about September 15, 2000, duly authorized representatives of EPA conducted a Compliance Evaluation Inspection (CEI) at Respondent's facility (the "Inspection").

3. At the time of the Inspection, the EPA representatives believed that Respondent had been in violation of a number of requirements relating to the generation and management of hazardous waste at its Mahwah facility and the transportation off-site of that hazardous waste.

4. On or about September 19, 2000, an EPA sampling team took samples of the lead-contaminated soil wastes that had been generated at Respondent's facility and determined that the wastes, which were now being stored at Betal Environmental Corp.'s Paterson facility, were a characteristic hazardous waste (EPA Hazardous Waste code D008-Lead).

5. On or about December 20, 2000, EPA, pursuant to § 3007 of the Act, 42 U.S.C. § 6927, sent an Information Request Letter ("the December information request letter") to Respondent seeking information regarding, inter alia, its generation, management and offering for transportation off-site of the lead-contaminated soil wastes generated at its facility.

6. By letter dated January 17, 2001, Respondent provided information relating to its generation, management and offering for transportation off-site of the lead-contaminated soil wastes generated at its facility.

7. Based upon the September 15, 2000 inspection, the analytical results from the September 19, 2000 EPA sampling and Respondent's response to Complainant's request for information, Complainant issued the Complaint herein alleging that Respondent: (a) failed to file a Notification of its Hazardous Waste activity in violation of 3010(a) of the Act, 42 U.S.C. § 6930(a) and 40 C.F.R. § 262.12(a)(1993)(N.J.A.C. 7:26G-6(1)(a)), (b) offered hazardous waste to a transporter for transportation off-site without preparing a Hazardous Waste Manifest in violation of 40 C.F.R. § 262.20(a)(1993)(N.J.A.C. 7:26G-6.1(a)), (c) failed to operate its facility to minimize releases of hazardous waste to the environment in violation of 40 C.F.R. § 265.31(1993)(N.J.A.C.

7:26G-9.1(a)), and (d) failed to meet land disposal restriction requirements in violation of 40 C.F.R. § 268.7(a)(1)(1993) (N.J.A.C. 7:26G-11.1(a)).

8. Respondent intends, as of the date of this agreement, to voluntarily comply with EPA's January 2001 manual Best Management Practices for Lead at Outdoor Shooting Ranges in operating its outdoor shooting range at Mahwah, New Jersey.

CONCLUSIONS OF LAW

1. Respondent is a "person", as that term is defined in § 1004(15) of the Act, 42 U.S.C. § 6903(15)

2. Respondent is a "generator" of "hazardous waste" as those terms are defined in 40 C.F.R. § 260.10 and 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1 (a)).

3. The facility has been a "hazardous waste management" "facility" as those phrases are defined in 40 C.F.R. § 260.10 and 40 C.F.R. § 260.10 (1993) (N.J.A.C. 7:26G-4.1 (a)).

4. EPA believes that Respondent has violated the following specific requirements of RCRA: (a) failure to file a Notification of Hazardous Waste activity in violation of 3010(a) of the Act, 42 U.S.C. § 6930(a) and 40 C.F.R. § 262.12(a)(1993) (N.J.A.C. 7:26G-6(1)(a)), (b) failure to prepare a Hazardous Waste Manifest to accompany hazardous waste that was being shipped off-site in violation of 40 C.F.R. § 262.20(a)(1993) (N.J.A.C. 7:26G-6.1(a)), (c) failure to operate its facility to minimize releases of

hazardous waste to the environment in violation of 40 C.F.R. § 265.31(1993) (N.J.A.C. 7:26G-9.1(a)), and (d) failure to meet land disposal restriction requirements in managing hazardous waste at its facility in violation of 40 C.F.R. § 268.7(a)(1)(1993) (N.J.A.C. 7:26G-11.1(a)).

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" 40 C.F.R. § 22.18(2001), it is hereby agreed by and between the parties hereto, that Respondent shall comply with the following terms:

1. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent pursuant to 40 C.F.R. § 22.18(b)(2): a) admits the jurisdictional allegations of the Complaint, and b) neither admits nor denies the factual allegations made in the Complaint, and further neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent Agreement.

2. Respondent shall comply at its Mahwah facility with any applicable federally enforceable RCRA regulations including, but not limited to those, found at 40 C.F.R. Part 262 (1993) (N.J.A.C. 7:26G-6.1(a)), 40 C.F.R. Part 265 (1993) (N.J.A.C. 7:26G-9.1(a)) and 40 C.F.R. Part 268 (1993) (N.J.A.C. 7:26G-11.1(a)).

3. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to continue to comply with all applicable provisions of federal, State, or local law.

4. Respondent shall pay a civil penalty in the amount of sixty thousand dollars (\$60,000.00) payable to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such check shall be mailed to:

EPA Region 2 (Regional Hearing Clerk)
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

Respondent shall also send a copy of this payment to:

Gary H. Nurkin
Assistant Regional Counsel
Waste and Toxic Substances Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - Room 1623
New York, New York 10007

and

Karen Maples
EPA Region II Hearing Clerk
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 17th Floor
New York, New York 10007

Payment must be received at the above address on or before 45 calendar days of the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date").

a. Failure to pay the payment in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

b. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid.

5. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities that might have attached as a result of the allegations contained in the Complaint issued in this case. Respondent has read the Consent Agreement, understands its terms and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order.

6. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

7. Full payment of the penalty proposed in this settlement pursuant to 40 C.F.R. § 22.18(b) shall resolve all of Respondent's liabilities to the EPA for federal civil penalties for the specific violations alleged in the Complaint but shall not affect the rights of the EPA pursuant to 40 C.F.R. § 22.31(a).

8. Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on this Consent Agreement or on any of the matters herein stated, or on the accompanying Final Order.

9. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

10. The undersigned signatory for the Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

11. Respondent consents to the service of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

12. The effective date of this Consent Agreement and Final Order shall be the date that it is filed with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York. Respondent consents to the service of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

13. Each party hereto agrees to bear its own costs and fees in this matter.

RESPONDENT: COUNTY OF BERGEN

BY: 

Authorizing Signature

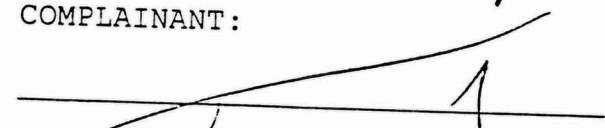
NAME: Dominic J. Narelli

(PLEASE PRINT)

TITLE: County Administrator

DATE: 10/11/02

COMPLAINANT:

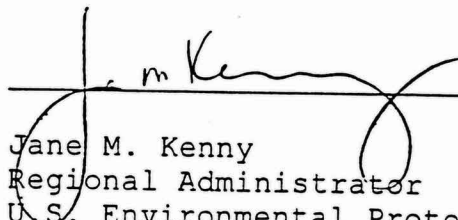

Richard L. Caspe, P.E., Director
Division of Enforcement
and Compliance Assistance
U.S. Environmental Protection
Agency - Region II
290 Broadway
New York, NY 10007

DATE: OCTOBER 24, 2002

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement in the Matter of COUNTY OF BERGEN Docket No. RCRA-02-2001-7110. The Agreement entered into by the parties is hereby ratified, incorporated by reference herein, and issued, as an Order, effective immediately upon filing with the Regional Hearing Clerk.

DATE: 10/28/02



Jane M. Kenny
Regional Administrator
U.S. Environmental Protection
Agency - Region II
290 Broadway
New York, New York 10007

In the Matter of the COUNTY OF BERGEN
Docket No. RCRA-02-2001-7110

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Regional Hearing Clerk
 U.S. Environmental Protection
 Agency - Region II
 290 Broadway, 17th floor
 New York, New York 10007-1866

Copy by Pouch Mail:

Honorable Stephen J. McGuire
 Administrative Law Judge
 U.S. Environmental Protection
 Agency
 401 M Street, S.W.
 Mail Code 1900 L
 Washington, DC 20460

Copy by Certified Mail,
Return Receipt Requested:

David Mairo, Esq.
 Connell Foley LLP.
 Attorney for Respondent
 85 Livingston Avenue
 Roseland, New Jersey 07068

Dated: 11/1, 2002
 New York, New York

Deirdre Ahearne